

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:95-cr-41-01

v.

HONORABLE PAUL L. MALONEY

JAMES EDWARD SMITH

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant James Edward Smith has filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 706 and 711 of the United States Sentencing Guidelines modified the Drug Quantity Table with regard to cocaine base (crack cocaine). These modifications were made retroactive effective March 8, 2008. U.S.S.G. § 1B1.10(c). However, the amendment does not allow for a reduction if the offense involved 4.5 kilograms or more of cocaine base. Therefore, the defendant's offense level has not change.

As Defendant is currently serving a term of imprisonment based on his offense which included distributing more than 4,500 grams of cocaine base, the Court is not authorized to reduce his term of imprisonment based upon the modifications to the sentencing guidelines.

Accordingly,

IT IS HEREBY ORDERED that Defendant James Edward Smith's motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (Dkt. #389) is **DENIED**.

Date: July 31, 2008

/s/ Paul L. Maloney

Paul L. Maloney

Chief United States District Judge